United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

76-1087

76-1088

To be Argued by
JAMES A. CUDDIHY

B
P/S

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

BENNY ONG, WONG WAH, TOM HOM and ALBERT YOUNG,

Defendants-Appellants.

On Appeal from The United States District Court for the Southern District of New York

BRIEF FOR DEFENDANT-APPELLANT, TOM HOM

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NEW YORK TIMES, March 18, 1976

Letter from James A. Cuddihy, Esq. to Hon. Charles L. Brieant, dated January 13, 1976. Pages 17 through 24.

Letter from James A. Cuddihy, Esq. to Hon. Charles L. Brieant, dated February 6, 1976, Pages 25 and 26.

STATEMENT OF THE CASE

This is an appeal by Defendant Tom Hom ("Hom") from a judgment of conviction entered in the United States District Court for the Southern District of New York after trial before the Honorable Charles L. Brieant.

Count One of the indictment charged that defendant conspired (Title 18, United States Code, Section 371) with Benny Ong ("Ong"), Wong Wah ("Wah") and Albert Young ("Young") to commit the crime of bribery against the United States of America, to witn, to violate Title 18, United States Code, Seccions 201(b) and 2.

The conspiracy alleged was that Hom together with the other defendants colluded to pay bribes to two investigators of the United States Immigration and Naturalization Service.

At the conclusion of the case, the Court dismissed the conspiracy count against Young.

Hom was also charged on counts sixty-four through seventy-three under Title 18, United States

Code, Section 201(b) of bribing the said two investigators and on counts seventy-four through seventy-eight under Title 18, United States Code, Section 201(b) and 2 of bribing directly or indirectly with Ong, the same two investigators. The total amounts therein involved, in equal payments of $200, was $3,000.

Hom was convicted on all counts and sentenced to a term of three years imprisonment on concurrent sentences.

It is submitted that no conspiracy existed between Young and Hom or Wah and Hom nor were any overt acts proven between them and it was error for the Court not to have dismissed Count One in toto. It was further error for the Court to fail to instruct the jury more fully with reference to overall conspiracy after the failure of one and then (it is submitted) two parts of the conspiracy alleged.

In light of the proposed sentencing procedures of the Second Circuit Judicial Council and the unusually harsh sentence imposed by the Court, it is requested that, in the alternative of a reversal and a new trial, a resentencing be ordered.

STATUTES INVOLVED

Statutes

TITLE 18, U. S. CODE, SECTION 371

§371 Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

TITLE 18, U.S. CODE, SECTION 201(b)

§201. Bribery of Public Officials and Witnesses

(b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of any value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any person or entity, with intent -

(1) to influence any official act; or

(2) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(3) to induce such public official or such person who has been selected to be a public official to omit to do any act in violation of his lawful duty; or ...

TITLE 18, U.S. CODE, SECTION 2

§2 Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

STATEMENT OF FACTS AND PROCEEDINGS BELOW

Hom is a Chinese alien who now resides and resided, at all times during the course of the proceedings here at issue and during the entire period which encompasses all of the counts involved, at 22 Pell Street, New York, N. Y.

The Grand Jury returned an indictment against Hom and three other individuals, i.e. Ong, Wah and Young. The indictment was referred to the Hon. Charles L. Brieant for trial.

Hom was charged, together with the aforesaid Ong, Wah and Young, with unlawfully, wilfully and knowingly, together and with each other and with other persons, combining, conspiring, confederating

and agreeing to commit crimes against the United States of America, to wit, to violate Title 18, United States Code, Section 371.

Hom was charged, together with the aforementioned defendants, with paying money corruptly to agents of the Immigration and Naturalization Service ("INS") to influence official acts, to influence the said public officials to commit and aid in committing and colluding in allowing a fraud upon the United States and inducing these public officials to do and to omit to do acts in violation of their lawful duties, to wit, to cause INS to cease conducting certain search operations for illegal aliens and to provide the defendants in advance with confidential information concerning the time, place and date of such proposed search operations.

It was charged that the defendant Ong introduced Hom to the INS investigators for the purpose of Hom offering money to them and that Hom thereafter, either directly or through Ong, made regular cash payments to the investigators. Hom was charged with two overt acts with Wah (Para. 6 and 7 of Overt

Acts under Indictment) of making two payments of $200 each to the investigators.

Hom was further charged, under Title 18, United States Code, Section 201(b) with making ten separate payments on ten different dates to the investigators. Finally, Hom was charged together with Ong with making separate payments of $200 each to the investigators on five different dates under Title 18, United States Code, Sections 201(b) and 2.

Testimony was elicited from the investigators and testimony secured through recording devices was also introduced to establish that the payments alleged had been made. No testimony was elicited to establish that any conspiracy of any kind existed between Young and Hom and in fact no true evidence to establish a conspiracy between Hom and Wah (R. 1056, 1058-1060) in conformity with Para. 6 and 7 of the Covert acts under Count One. In fact only two instances were ever even adduced to indicate that Wah and Hom ever saw one another or were ever in each others presence (R. 173-174, 182).

On November 28, 1975, Judge Brieant charged the jury and informed it that the charge of conspiracy against the defendant Young was not being presented to it for its verdict. He instructed the jury that it must disregard absolutely any suggestion whatsoever of illegal conduct on the part of the defendant Young arising out of that conspiracy count and that it must restrict its deliberations and considerations of the evidence which was before it regarding Young to the question of whether or not the government had proven Young guilty of the substantive crimes charged starting in Counts 79 through 99 inclusive. He further pointed out that he would refer to the counts as either the conspiracy count or the substantive count and Count One would be the conspiracy count (R. 1127-1128). He also charged that if any defendant was to be convicted on Count One that there must be a single overall conspiracy in contrast to the concept of several separate and independent conspiracies involving various groups of conspirators (R.1140-1141).

ARGUMENT

POINT I

THE TRIAL COURT ERRED AS A MATTER OF LAW IN PERMITTING THE JURY TO CONVICT DEFENDANT OF HAVING VIOLATED TITLE 18, UNITED STATES CODE, SECTION 371.

Hom was convicted under Count One of having conspired with Ong and Wah to commit certain forbidden acts under Title 18, United States Code, Section 201(b), 2. In the indictment a conspiracy was alleged between all four of the defendants and the Court carefully charged that if any one defendant was to be convicted on Count One it should be in a "single overall" theory in connection with the three defendants exclusive of Young (R. 1140-1141). In effect, the Young count was severed only after the trial was completed (R. 1127).

Unquestionably all members of a conspiracy need not have contact with or even knowledge of the identity of all the other conspirators so long as each conspired with common conspirators in a joint plan. U.S. vs. McDaniels, D.C. La. 1972, 57 FRD., 171. However, one may not be convicted of conspiracy

because of mere association with others, U.S. vs. Arroyare, C.A. Fla. 1974, 477 F.2d, 157. Agreeably, the essential elements of federal crime of conspiracy are agreement by two or more persons to combine efforts for illegal purposes and an overt act by one in furtherance of agreement, U.S. vs. Warner, C.A. Tex. 1971, 441 F. 2d 821, cert. den. 92 S.Ct. 65, 404 U.S. 829, 30 L.Ed. 2d 58; U.S. v. Register, C.A. Ca. 1974, 496 F. 2d 1072, cert. den., 95 S.Ct. 802; U.S. vs. Mendez, C.A. Tex. 974, 496 F. 2d. 128; U.S. vs. Fontenot, C.A. Ga. 1973, 483 F. 2d, 315, but in this case there can clearly be no conspiracy with Young nor in fact was there any conspiracy with Wah. The intent required for the crime of conspiracy is the same degree of intent required for the substantive offense alleged to be the object of the conspiracy, U.S. vs. Koenig, D.C. N.Y. 1974, 388 F. Supp. 370, but how can it be assumed that a jury would have found the degree of intent for conspiracy under Count One solely between Ong and Hom particularly in view of the fact of the government's portrayals of Ong as the twenty year veteran and

leader in bribery in Chinatown (R. 937-938, 956-957, 959). Absent Young and Wah and all references to them as conspirators in the record, the case assumes a totally new and different look.

If indeed one conspiracy falls with the Court's ruling and another is equally invalid, how can the final link result in a conviction under Count One? Would not the case have been tried differently and would not the jury have reacted to the count differently?

Fully recognizing that to establish a conspiracy it is not necessary to prove that all members thereof engaged in every transaction, U.S. vs. Fills, C.A. Tex. 1974, 497 F. 2d 80, cert. den. 95 S.Ct. 628, 419 U.S. 1051, 52 L.Ed. 2d 646, nevertheless, it is submitted that the overall conspiracy and the confusion engendered by the Young and Wah conspiracy deficiencies referred to by the Court must fail.

POINT II

THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO INSTRUCT THE JURY FURTHER SPECIFICALLY WITH REFERENCE TO THE OVER-ALL CONSPIRACY.

When the evidence distinctly shows two conspiracies, one of which does not involve a particular defendant, his conspiracy conviction cannot stand unless the jury is specifically instructed that it must find a conspiracy in which the defendant was a party and that it cannot consider evidence of a separate conspiracy in which he was not a party. It is not sufficient to instruct the jury that it must find a single overall conspiracy in order to convict the defendant when there is no evidence of such overall conspiracy. U.S. vs. Klein, 515 F. 2d 751, (3d Cir. 1975). In this case, there was not even two distinct conspiracies, but yet evidence was admitted without appropriate charge by the Court which related to a so-called conspiracy between Wah and Hom. In reality the so-called overall conspiracy had collapsed.

The defendant is not unaware that a conviction

on substantive grounds is not necessarily tainted by the improper conviction of conspiracy as the Court so held in U.S. vs. Klein, supra. However, since the jury was presented with evidence initially including a four defendant conspiracy, which was reduced to a three defendant conspiracy and then. if defendant's position is upheld, a two man conspiracy, it is difficult to believe that a jury could possibly understand the meaning of an overall conspiracy and its subtle distinctions and variations which, in the absence of judicial guidance, could easily have resulted in a different verdict, certainly with respect to the non-substantive count.

POINT III

SENTENCE OF THE COURT WAS UNREASONABLY HARSH AND COURT IS ASKED TO TAKE JUDICIAL NOTICE OF ITS OWN NEW PROPOSED SENTENCING RULES.

It is fully recognized that, normally, a sentence within the term authorized by the statute is invulnerable to attack on appeal, U.S. vs. Winn, C.A. Okla 1969, 411 F. 2d 415, cert. den. 90 S.Ct., 245, 296 U.S. 919, 24 L.Ed. 2d 198. Nevertheless,

it is respectfully urged that the Court consider the Second Circuit Judicial Council new sentencing procedures announced by Judge Irving R. Kaufman, the head of the Judicial Council on March 17th. Judge Kaufman stated that the proposed rules represent a major step in the continuing effort of this Circuit to bring greater openness, fairness and certainty to this important area. New York Times, March 18, 1976.

Under the new rules it will be necessary for a sentencing judge to explain on the record his reasons for imposing a sentence and rejecting alternatives. The sentencing judge would be directed to hold a pre-sentence conference with the prosecutor, defense lawyer and probation office to discuss all relevant facts affecting the sentence. In addition, the defense lawyer would be permitted to submit a sentencing memorandum proposing sentencing alternatives to the judge.

The enormous values and benefits of these procedures are inescapably clear and would in many cases eliminate the necessity of the often useless

defense lawyer's plea on sentencing day when the sentence may already have been predetermined. It is difficult to believe, that in view of Hom's background and under unusual circumstances in even more unusual times and involving such a relatively small amount of money, that such a harsh sentence would or could practically be imposed under the new rules. It is, therefore, respectfully urged, although with full knowledge that the sentence was legally rendered, that this Court give consideration to its own proposed new sentencing rules at this time. This would hardly be violative of due process.

In the event this Court should agree that it would be appropriate to consider the new rules and their possible effect as regards the uniquely harsh and unreasonable sentence herein, copies of two letters from the undersigned to the Court are enclosed at Pages 17 - 26 as "Other Material Cited". The letters, it is believed, are illustrative and perhaps contain the very type of information and background which should be so important in a court's deliberation before sentencing

and which should assist a court in arriving at the openness, fairness and certainty of criminal sentences so devoutly urged and desired by the Second Circuit Judicial Council.

CONCLUSION

Defendant therefore requests that he be acquitted of Count One on the grounds of a failure to prove conspiracy and a failure of the Court to properly instruct the jury on conspiracy. Defendant further requests that his conviction on all of the remaining substantive counts be reversed for a new trial on the ground that the conviction was, in this case, tainted by the improper conviction of conspiracy. Alternatively, defendant requests that the case be referred back to the District Court for resentencing more in spirit and compliance with the new sentencing procedures approved by the Second Circuit Judicial Council, irrespective of whether

they have been formally adopted by the district courts at the time of this Court's decision.

Respectfully submitted,

JAMES A. CUDDIHY
Attorney for Defendant-
Appellant Tom Hom

595 Madison Avenue
New York, New York 10022

January 13, 1976

Hon. Charles L. Brieant
United States District Court
Southern District of New York
U. S. Courthouse
Foley Square
New York, N.Y. 10007

Re: Hom Hawk Kin
(U.S.A. vs. Benny Ong, et al.
74 Cr. 1127)

Dear Judge Brieant:

As you know, I represented Hom Hawk Kin, referred to colloquially as Tom Hom, during the recent jury trial in the aforecaptioned matter. The trial, of course, resulted in a conviction of Tom Hom on the evening of November 28, 1975 on all counts charged in the indictment.

I was informed by your law secretary last week that the sentencing, originally scheduled by you for 9:30 A.M. on Friday, January 9th, had been postponed to an indefinite date but that you had received the Probation Report. He stated the reason therefor was that Mr. Rosenthal had made a motion in connection with the defense of his client, Albert Young, which is returnable today. I have also learned that Mr. Herman has made a motion, also returnable today, but I am unfamiliar with both. Your law secretary also said that he would inform me of the adjourned date of the sentencing by telephone and that it will be sometime after today.

Under these circumstances, I am taking the liberty of writing to you and enclosing two character references from friends of Mr. Hom, addressed to you and delivered to me. My interpreter, James Leung, assisted them in the preparation of the letters, and I was not present at the meetings nor have I made or suggested any changes in the letters. I thought it would be more effective for you to read the letters exactly as prepared and delivered (although the contents of same are agreeably somewhat lacking the

literary refinements of a William Buckley or Anthony Lewis). They indeed appear more impressive to me in their tones of sincerity than the sets of glittering and urbane letters from the leading members of the community, social, legal, liturgical, etc. so often presented to the sentencing judiciary.

Dewey Wong is a restauratuer of note in the City of New York and, in my opinion, a citizen of good reputation and substance in the Chinese community.

I do not know Mr. Gong but it seems that he owns a small restaurant in Chinatown and has knowingly employed Mr. Hom as cashier even after learning of his conviction.

In some twenty-seven years of trying cases before various courts in this country, I have attempted to be, while always an advocate, ultimately objective in my thinking and presentations. In this particular case, I confess to being somewhat subjective now that the trial has concluded and for the following reasons:

1. Ever since Mr. Hom was referred to me, his words and actions have been entirely circumspect and free from guile. I believe that he has been totally honest at all times from the moment he informed me in my office of his indictment and, upon my advice, promptly surrendered himself to the Federal Bureau of Investigation and the United States Attorney for the Southern District of New York.

2. He appeared with me at the Probation Office at the time and date directed and has had several meetings with the Probation Officer, one of which took place in my presence, in part. I am certain that he has cooperated to the very best of his ability. I have seen no purpose to date in requesting a copy of the presentence report under Rule 32.

3. Before, during and after the trial, I have visited Chinatown and several of its restaurants

in Mr. Hom's company and in the company of the interpreter, Mr. Leung. Without exception, everyone whom he met appeared to genuinely like him and to be genuinely concerned with his problem.

4. He has never been convicted or tried for any crime but has been arrested once or twice for minor gambling violations.

5. I am informed that he has filed all appropriate tax returns and paid the taxes due thereon.

6. It is my opinion and I am, of course, not re-arguing my case (a copy of this letter will go to Mr. Kuriansky) that no conspiracy was established between Mr. Hom and either Mr. Young or Mr. Wah. I am convinced that he had but a nodding acquaintance with both of them and, in fact, there are only two occasions in the entire record that he is present with Mr. Young (never Wong Wah) and then one is entering the room and one is leaving it. Other than greetings of salutation, there is no conversation.

7. I do not raise the above thought idly but to stress the sense of isolation in which Mr. Hom so obviously appeared throughout the record of trial, and his apparent misguided and ingenuous dependence upon the fourth defendant. There is no doubt but that he made payments, but only believing this to be the accepted norm of conducting gambling operations in Chinatown. Indeed, the Court recognized that illegal (sic!) gambling could not flourish within the City of New York without some sort of governmental condonation and indeed stated to the jury that anyone who has lived in New York City within the last twenty years must be naive so to think.

8. There is no doubt in my mind that Mr. Hom likes to gamble, and I believe that it is a scientific theorem of some authority that the Chinese alien is more inclined to gambling than any other single group, probably for good and sound sociological reasons. I am convinced that Mr. Hom can

read, digest and understand perhaps no more than 2% of a given page from the New York Times. However (and I presume that this is a type of reverse dyslexia with some medical connotation or description), Mr. Hom can read and analyze a racing form for Aqueduct or Hialeah more swiftly and accurately than the average man.

9. In brief, Mr. Hom gambles, likes gambling and unquestionably will continue to gamble. I, for one, will not and, in fact, cannot moralize about the vice or sport. As you well know, gambling is only a crime by statute and certainly the State of New York and City of New York embrace it whole-heartedly provided it is done at certain times and places under certain constraints which, under no stretch of the wildest imagination, can have anything to do with morality, religion or the Divine Right of Kings. Placing a wager in the O.T.B. office at Grand Central Station and placing a wager with the elevator starter across the street in the Chrysler Building would hardly seem to differ in spiritual evaluation.

10. Before the trial and during the trial, I had an exceedingly difficult decision to consider, i.e. whether I would ask Mr. Hom to take the stand. I had, long before, informed the other attorneys and Mr. Kuriansky that I was contemplating the same. Mr. Hom, Mr. Leung and I had prepared, at length, for examination and for what I believed would be the form and thrust of cross-examination. In point of fact, on the evening before the day on which the decision had to be made and, at Mr. Kuriansky's request (presumably so that he could prepare for cross-examination and have additional witnesses present, if necessary), I called him at his office at 9:30 in the evening to inform him of my then present thinking. At that time I had not made the decision nor had I during the morning of the trial on the following day.

At luncheon I again reviewed in depth with Mr. Hom and Mr. Leung the pros and cons of taking the

witness stand, made my recommendations and then allowed Mr. Hom to make the decision. This was literally after weeks of painstaking analysis and explanations and the ultimate negative decision was arrived at only after grave deliberation. As soon as I returned to Court, I informed Mr. Kuriansky and the other attorneys that Mr. Hom would not take the stand. Whether or not this was the correct decision can only remain moot forever. I am totally persuaded that Mr. Hom's decision was predicated as much upon the combination of a fear of a strange environment, a trial of a nature that his experience and background was ill equipped to comprehend and the language barrier, as much as any other single factor. (I shudder to contemplate the average American under similar circumstances in Madrid, Spain; Peking, China; Port Antonio, Jamaica; Mexico City, Medico, etc.)

I would further ask your indulgence to point out that I am extremely cognizant of the difficulties and pressures that you and your brethren of the Federal Bench have with reference to achieving any uniformity of sentencing. Over the years I have worked on Committees of the Tax Section of the American Bar Association with Scott Crampton, the Assistant Attorney General in Charge of Taxation, and his staff, with Johnnie Walters, the former Commissioner of Internal Revenue and his staff, and the Federal Judiciary in connection with problems of sentencing after conviction of Federal tax fraud. My academic experience in sentencing studies, therefore, has been limited to the tax fraud case, but I would think that the essential nature of the sentencing process differs from this and other Federal crimes in only one or two particular respects, i.e. normally those so convicted are in the so-called white collar echelon or, to a much lesser extent, are those in organized crime. However, the differences in sentencing here are in many cases quite astounding. For example, up until a few years ago, there had never been an unsuspended jail sentence for criminal tax fraud in the State of South Dakota. Nevertheless, in the State of South Dakota, the

county embracing Mitchell and Sioux Falls has the highest median per capita of any county in the United States, Westchester and Fairfield Counties notwithstanding. As you might suspect, we were not able to draw any inferences of significance from these particular facts other than to recognize that this is merely one item which contributes and stresses the lack of uniformity but gives no patented answers.

I am taking the liberty of enclosing an item from the New York Times dated January 7, 1976, discussing the sentence imposed by U. S. District Court Judge Frank J. McGarr on Ralph G. Newman. I have also underlined which I believe to be a key sentence in the item. Obviously, I do not know all of the facts which led to the sentence nor have I read the letters submitted to Judge McGarr nor heard the argument made in his behalf at the sentencing but, nevertheless, as no more than an informed citizen for this purpose, I must reflect and be seriously concerned about such a sentence. Mr. Newman, obviously intelligent, highly regarded and represented by supposedly competent counsel, is convicted of serious crimes (covered thoroughly in the national and international press) and the Court even takes pains to point out that as such a respected public figure he has a greater responsibility to uphold the law. This too, of course, after a jury conviction. With this introduction, pro apologia sua vita, the Court thereupon startingly elected not only to refrain from giving Mr. Newman a sentence but also stated that there would be no need of probation.

For what would appear, but only on the surface, as a somewhat divergent result, I refer to your recent sentencing of Major Sangemino for the acceptance of bribes for quite infamous reasons and for false testimony before a grand jury. I, however, find this sentence, in my own personal view, reconcilable with the non-sentence of Judge McGarr in Chicago. Again, I am not possessed of the facts, probation report, number of bribes, etc. However,having served in the U.S. Marine Corps during World War II as a Rifle

Company Commander in five operations in the Pacific and having been recalled and appointed Staff Legal Officer of the Second Marine Division and the Fleet Marine Force Atlantic during the Korean War, I am perhaps too wholly in sympathy with your sentence. In early 1951, I was the second officer in the U.S. Marine Corps to be appointed by the Judge Advocate General of the Navy as a Law Officer, which (then and now under the Uniform Code of Military Justice) is comparable in the military to a U. S. Federal Court Judge. Having such ties and experience therefor, I would believe that in a case of the type referred to above, I would have, for somewhat obvious reasons, felt myself constrained to seek disqualification because of prejudice or the appearance thereof.

My primary purpose in briefly touching the fringes of the extraordinarily complex and sometimes bewildering problem of sentencing is to simply indicate what I believe to be my keen sensitivity to the problems involving personality, experience, background, environment, etc. which of necessity must be considered before any judge can properly and conscientiously arrive at his sentence. I also believe that any thoughts, suggestions, information, background material, personal opinions, etc. may and can be helpful to the sentencing judge. He, very much alone at that point, becomes the sole arbiter and judge of what is truly an awesome task. I have, therefore, endeavored to set forth my reasons and thoughts and wishes, as succinctly as possible under the circumstances to prayerfully seek a judgment of compassion and mercy from the Court. I sincerely do not believe that an unsuspended sentence to prison in this case would serve a useful purpose to the Court, to our system of Federal jurisprudence, to the contrite defendant, to the Federal prison system or to society at large.

In view of all of the above factors and in spite of some of my perhaps voluntary and conclusory thoughts, I do most respectfully ask you to so exercise your compassion and suspend any sentence which

you may deem prudent to impose. Mr. Hom now recognizes the serious nature of his crime, which I am convinced he did not at the times of commission, and is truly repentant. The specter of a jail term has indeed in and of itself been a severe and virtually traumatic experience for him.

I am finally most appreciative of the consistently fair, considerate, impartial and thoroughly judicious manner in which both the pre-trial matters and the actual trial were conducted by you.

Respectfully yours,

JAC/ad
Encs.

James A. Cuddihy

cc: Edward J. Kuriansky, Esq.

February 6, 1976

Hon. Charles L. Brieant
Room 607 E
United States District Court
Southern District of New York
U. S. Courthouse
Foley Square
New York, New York 10007

Re: Hom Hawk Kin
(U.S.A. vs. Benny Ong, et al,
74 Cr. 1127)

Dear Judge Brieant:

In reviewing my files preparatory to the sentencing of my client, Tom Hom, I have re-read my letter to you dated January 13, 1976.

I would like to point out one inadvertent and unimportant error which appears on the second line of Page 3 but which I would prefer to correct in the interest of complete accuracy. The line should more properly read as follows: '...with Wong Wah (never Mr. Young) and then one is entering the room and...'

I have reviewed the Probation Report in your outer Chambers and find nothing in the report contrary to what either Tom Hom or I have ever indicated to be the facts other than one or two details of a purely minimal and ministerial nature.

As a point of more than passing interest in view of my thoughts and comments concerning the problems of sentencing, I herewith enclose, with your indulgence, a clipping from the NEW YORK POST, dated January 21, 1976, involving a sentencing by a U. S. District Court colleague of yours. The emphasis is, of course, mine but I thought it would be both appropriate and interesting particularly in view of the comments contained in the last paragraph

of my aforesaid letter on Page 1. You will note that the Court was apparently swamped with some 225 letters although it would appear quite evident that these letters were far from overly persuasive to the Court. I am pleased to stand on the two character letters which I forwarded to you and for the same reasons outlined in my letter.

I also feel that the Court's comments that imprisonment would not benefit Mr. Greenberg or society must be trebly true in the case at hand and for the reasons and sentiments contained in the last sentence of my first paragraph on Page 6.

Respectfully yours,

JAC/ad
Enc.

James A. Cuddihy

cc: John Cooney, Esquire
Asst. U. S. Attorney

A 202 Affidavit of Personal Service of Papers — LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

- against -

BENNY ONG, WONG WAH, YOM HOM AND ALBERT YOUNG,
Defendants- Appellants.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF **NEW YORK** *ss.:*

I, Victor Ortega, *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 1027 Avenue St. John, Bronx, New York

That on the **9th** *day of* **April** *19* **76** *at* **see attached**

deponent served the annexed **APPENDIX BRIEF** *upon*

see attached

the **Attorneys** *in this action by delivering* 2 *true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein.*

Sworn to before me, this **9th** *day of* **April** *19* **76**

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977

Victor Ortega

VICTOR ORTEGA

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